IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 381 of 2006

Kaushal Godha .. Petitioner

versus

M/s.Ekta Films & 2 ors. .. Respondents

...

Mr.S.K. Chaurasia i/b A.M. Saraogi for the petitioner.

Mr.S.R. Saudagar for respondent no.1.

Mr.A.V. Pawaskar for respondent no.2.

CORAM : D.G. KARNIK,J.

DATED : 10th January 2007.

P.C.:

1. This application under section 34 of the Arbitration and Conciliation Act 1996, (for short 'the Act') is directed against the award dated 22nd April 2005 passed by the Joint Tribunal of the Film Makers Combine and the Motion Pictures Association, Delhi.

2. The petitioner is the producer of the film titled as "the filk - The Burden of Truth" (for short 'the Karz'). An agreement regarding distribution of the film was executed between the petitioner and respondent no.1 on 20th August 2001. It appears that thereafter an agreement styled as "Producer and Distributor certificate" for registration of picture was signed between the petitioner and the respondent no.1 on 13th November 2002. Clause no.9 of the said Producer and Distributors certificate contains an arbitration clause which reads thus:

> **9.** All differences or disputes between the Producer and the Distributor relating to the picture shall always be referred to the Joint Tribunal of the Producer's apex body i.e. Film Makers Combine and the Distributor's Association viz. Motion Picture Association Delhi and the decision of such joint Tribunal shall be final and binding on both the parties."

3. Disputes arose between the parties regarding the payment of Rs.5,30,000/- which the respondent no.1 was required to pay to M/s.Adlabs Films Limited. The respondent no.1 demanded the payment of Rs.5,30,000/- which the petitioner did not pay. It appears that the respondent no.1 therefore made a complaint to the Motion Pictures Association for recovery of Rs.5,30,000/- from the petitioner. In the meeting of its sub-committee held on 28th April 2003, Motion Pictures Association resolved that pending finalisation of the claim of the respondent no.1, claim papers be sent to the Producers and Film Makers Combine. An intimation to that effect was sent by the Motion Pictures Association to the petitioner by a letter dated 18th June 2003. Thereafter on 17th December 2003, the Motion Pictures Association issued a notice to the petitioner stating that the matter was being placed before the acquiring sub-committee in its meeting scheduled to be held on 6th February 2004 in the office of Motion Pictures Association, Chandni Chowk, Delhi wherein the petitioner should appear in person or through its authorised representative in support of its

contention. It is not clear whether the petitioner appeared before the committee on 5th January 2004. However on 30th April 2004 the Motion Pictures Association intimated to the petitioner that Association had taken an interim decision on 5th April 2004 and the matter would be placed in the agenda of the Joint Tribunal of Motion Pictures Association and Film Makers Combine in its meeting scheduled to be held on 24th/25th May 2004 where the petitioner may put up its defence if he has any in the matter.

4. On 25th July 2006, the petitioner received a notice from by Navin Chandra, Advocate of the respondent no.1 making a demand of Rs.5,30,000/- together with interest at 24% p.a. In paragraph no.4 of the notice it was alleged that in April 2003, the respondent no.1 had made a claim against the petitioner with the Motion Pictures Association and that the claim was placed on the agenda of the Joint Tribunal of Motion Pictures Association and Film Makers Combine in their meeting scheduled on 25th May 2004. Notice further alleged that after examining the claim of the respondent no.1 the Joint Tribunal had given its claim, the Joint Tribunal gave its

award on 22nd April 2005 at its meeting held in Delhi and had upheld the claim of respondent no.1. The petitioner who had no intimation of the meeting of the Joint Tribunal was taken by a surprise by this communication. By its advocate's letter dated 14th August 2006 addressed to the advocate of respondent no.1, the petitioner pointed out that no notice of hearing was issued to it and that it had learnt for the first time of the alleged passing of the award. The petitioner also wrote a letter to the Motion Pictures Association as well as to the Film Makers Combine asking them for the copy of the award, if the same was passed. However a copy of the award was never sent to the petitioner. Petitioner has therefore challenged the award allegedly passed on 22nd April 2005, by the Joint Tribunal.

5. It appears to me that the regular procedure of arbitration was not followed. The initial claim was made by respondent no.1 with the Motion Pictures Association and not to the Joint Tribunal of Motion Picture Association and the Film Makers Combine which was given an authority to decide the claims under clause no.9 of the "Procedures and Distributors Certificate." The Joint Tribunal of Film Makers

Combine and Distributors Association and Motion Pictures Association, Delhi which was to act as an Arbitral Tribunal never issued any notice calling upon the petitioner to send its defence. The Arbitral Tribunal also never issued any notice of hearing to the petitioner. It appears that Motion Pictures Association of which the respondent no.1 alone is a member was espousing its cause and had issued some notices to the petitioner which have been referred to above. Motion Pictures Association had no authority to issue notices of hearing on behalf of the Arbitral Tribunal. It was the Arbitral Tribunal who ought to have called for the statement of defence and ought to have issued the notice of hearing. Arbitral Tribunal however never issued any notice of hearing to the petitioner. The matter was heard without any notice and in the absence of the petitioner. In the circumstances, it cannot be said that the Arbitral Tribunal has even observed principles of natural justice.

6. In the circumstances, the award dated 22nd April 2005 passed by the Arbitral Tribunal viz. the Joint Tribunal of Film Makers Combine and Motion Pictures Combine cannot be said to be a valid award

passed after giving an opportuity of hearing to the parties. Consequently, petition is allowed and the impugned award is set aside. There shall be no order as to costs.

D.G. KARNIK, J